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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. [illegible]

CHARLES H. GRIFFITHS, Trustee in Reorganization of GENERAL STORES CORPORATION,

Petitioner,

against

LEWIS J. RUSKIN, Collateral Trustee,

Respondent.

BRIEF OF REORGANIZATION TRUSTEE IN OPPOSITION TO PETITION BY COLLATERAL TRUSTEE FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM—1959

DOCKET NO. 569

LEWIS J. RUSKIN, as Trustee under Collateral Agreement dated May 19, 1954,

Petitioner,

against

CHARLES H. GRIFFITHS, Trustee in Reorganization of GENERAL STORES CORPORATION, Debtor,

Respondent.

BRIEF OF REORGANIZATION TRUSTEE IN OPPOSITION TO PETITION BY COLLATERAL TRUSTEE FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Trustee in Reorganization opposes the petition by the Collateral Trustee for writ of certiorari to the United States Court of Appeals for the Second Circuit to review that portion of the judgment of the Court of Appeals which affirmed the United States District Court for the Southern District of New York (Levet, J.) with respect to compensation of the Collateral Trustee and his expenses, including attorneys' fees.

The petition of the Collateral Trustee for certiorari principally attacked the position of the United States Securities and Exchange Commission in reorganization proceedings. The Securities and Exchange Commission does not require this Reorganization Trustee to defend its policies, practices or actions. Their position frequently is similar to that of the Reorganization Trustee wherein he is sometimes allied with one party to the proceeding against another, at one point in the proceeding, and at another junction in the path of progress of the proceeding, he may be aligned with his former opponent against his former ally. As a disinterested agency just as with a disinterested trustee, the prime concern is to benefit the reorganized company with fairness to all interested parties.

However, it is submitted that this is not a proper case for determination of the questions propounded by the Collateral Trustee. The opinion of the District Court is reprinted in full at pages 22 to 61 of the Appendix to the Reorganization Trustee's petition for cross-writ of certiorari, and 24 pages of that opinion are devoted to the issues raised by the Collateral Trustee's petition.

Compensation of Lewis J. Ruskin

The reorganization court analyzed the provisions of the collateral agreement (39-40*), recognized the services allegedly rendered by Lewis J. Ruskin (40), discussed them thoroughly (40-43) and came to the independent conclusion that the services for which he could be compensated were only those services as trustee of the collateral and not as chief executive of the chain of drug stores (43).

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*Page references are to the Appendix to the Reorganization Trustee's petition for cross-writ of certiorari.

The amount awarded by the reorganization court differed from the recommendations of the Securities and Exchange Commission as shown in the table below.

Date Services Rendered	*Reorganization Court*	*Securities and Exchange Commission*
10/18/54 to 4/30/56	$ 9,215.00	None
5/ 1/56 to 12/31/57	15,000.00	$10,000.00
	$24,215.00	$10,000.00

The Court of Appeals below on this question stated (72):

> "Consequently an appellate court would be less than wise if it did not rely heavily for guidance in such matters upon the SEC which functions as a responsible and disinterested public agency, *Scribner & Miller* v. *Conway*, *supra*; *Finn* v. *Childs Co.*, *supra*, and the district court whose intimate knowledge of the whole reorganization gives it a peculiar advantage, *Johnson* v. *Carolina Scenic Stages*, 242 F. 2d 263 (4 Cir. 1957); *Finn* v. *Childs Co.*, *supra*; *Milbank, Tweed & Hope* v. *McCue*, 111 F. 2d 100 (4 Cir. 1940)."

After further discussion of the facts in the case, the Court of Appeals found (73) "after an examination of the record we are not convinced that the district court's findings and award are clearly erroneous."

The Court of Appeals below thus reaffirmed the legion of cases where the appellate courts have respected the findings of the district judge except where "abuse of discretion" has been found. *Johnson* v. *Carolina Scenic Stages*, 242 F. 2d 263 (4 Cir. 1957).

The instant case is not one in which the reorganization court blindly followed the recommendations of the Securities and Exchange Commission. The court's opinion is

lengthy and shows the extensive consideration given to each aspect of the claim and the reasons for the court's determination.

Fees of Collateral Trustee's Attorneys

The reorganization court analyzed the provisions of the collateral agreement (44-45), specified the services claimed to have been rendered (46) and found that some of the objections raised by the Reorganization Trustee and others had merit. Those meritorious objections were:

1. That there was duplication of services rendered by the New York and Chicago firms of attorneys involved (47);

2. That certain of the services rendered related to matters as to which legal action or advice by the Collateral Trustee's counsel was unnecessary (48);

3. That Ruskin and Rosenbaum during the period for which compensation is sought for them by the Collateral Trustee were receiving an annual retainer of $15,000.00 from Ford Hopkins Company, one of the debtor's subsidiaries (49);

4. That the negotiations, particularly in the beginning of the initial phases thereof with Richard Goodman were not such services as the court necessarily required or for which he may properly be compensated in the hiring of counsel (49); and

5. That the issues involved were not complex (50).

The reorganization court considered all of the elements which the courts traditionally have enumerated as proper in determining reasonable fees of attorneys on a *quantum meruit* basis (51), discussed in detail the specific services

rendered (50), and only then made its finding (56):

> "After a careful, independent consideration of the facts, examination of the affidavits and statements of the collateral trustee and his attorneys, and after reviewing the minutes, exhibits, briefs, motions, appeals and proceedings involved herein, this court is of the opinion that the sum of $5,000 is a fair, reasonable and adequate sum for allowance to the collateral trustee for payment of the firm of Ruskin & Rosenbaum for the period between October 15, 1954 and April 30, 1956, and that the sum of $55,000 is a fair, reasonable and adequate sum to be awarded to the said collateral trustee for payment for the combined services of Ruskin & Rosenbaum and Paul, Weiss, Rifkind, Wharton & Garrison for the period from on or about April 30, 1956 to December 15, 1957. Consequently, it is so found by this court."

The amounts awarded were identical to the amounts recommended by the Securities and Exchange Commission (54) but were independently arrived at.

The Court of Appeals below disposed of the claim that the reorganization court applied an erroneous standard of compensation by stating (75):

> "The district court fully realized that it was making an award under a contract between the debtor and Ruskin. It was also aware, and rightly so, that the award would be paid from a reorganization debtor's assets. *Newman & Bisco* v. *Realty Associates Securities Corp.*, 173 F. 2d 609 (2 Cir. 1949); *Butzel* v. *Webster Apartments Co.*, 112 F. 2d 362 (6 Cir. 1940)."

The Court of Appeals discussed the same issues taken into consideration by the trial court and stated (76):

> "Ruskin does not demonstrate that these findings of the district court were clearly erroneous. Nor does

> he show that the court's award made on the basis of those findings, an award in accord with the recommendation of the SEC, was an improper one."

and concluded (77):

> "We cannot say that here the broad discretion with which the district judge, in the first instance, must of necessity be empowered in this type of case, see *Johnson* v. *Carolina Scenic Stages*, 242 F. 2d 263 (4 Cir. 1957), has been abused."

Conclusion

The attempt to raise the spectre of an omniverous government commission which has vastly overreached its proper powers has no substance in fact, particularly in the instant case where the reorganization court gave the claims of the Collateral Trustee for his own compensation and expenses, including attorneys' fees, every fair consideration and independently arrived at the allowances awarded. The total allowances exceeded the recommendations of the Securities and Exchange Commission. The petition for a writ of certiorari should be denied.

Dated: December 30, 1959.

Respectfully submitted,

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